IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

Dhanpat Borana
Vs.
The Railways Employees Cooperative Banking Society & Ors.

S.B. CIVIL WRIT PETITION NO.4092/1996 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 20th November, 2006

PRESENT

REPORTABLE

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.M.C. Bhoot, Advodate, for the petitioner.
Mr.S.K. Malik, Advocate, for the respondents no.1 & 2
Mr.Rameshwar Dave, Dy.GA, for the respondent no.3
Mr. D.L.R. Vyas, Advocate, for the respondents no.4 to 6.

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BY THE COURT:

The petitioner Dhanpat Borana was appointed as clerk temporarily in the Grade of Rs.975-1540 + usual allowances for a period of three months by order dated 30th July, 1992 passed by Shri Mohan Singh Gehlot as Honorary Secretary of the Rajasthan Railway Employees' Cooperative Banking Society

Ltd., Jodhpur (in short the society). It was stated in the order that the appointment was subject to his qualifying written examination and satisfactory performance. Subsequently he was confirmed on the said post by order dated 12.11.1992 again passed by Shri Mohan Singh Gehalot as Honorary Secretary of the society.

According to the provisions of the Multi State Cooperative Societies Act, 1984 (in short the Act of 1984), which is an Act of the Parliament, election to the management committee of society was required to be held after every three years. When the election did not take place, one Satyanarayan filed a writ petition being S.B. Civil Writ Petition No.5780/1991 before this court, which was decided on 29th July, 1992. In the said writ petition, it was prayed that Bhuraram Choudhary respondent no.4 therein after expiry of period of three years automatically ceased to hold the office of the Honorary Secretary of the committee after 30th Oct., 1991. This Court noted that though bye laws on such an eventuality were silent but the general body of the society in its meeting held on 30th Oct., 1991

passed a resolution for continuation of the said Shri Bhuraram Choudhary as such Secretary till the election takes place and therefore it cannot be accepted that he automatically ceased to hold the office. The petition was disposed off with the direction to hold and complete the process of election within three months. The said judgment was upheld by the Division Bench in D.B. Civil Special Appeal NO.426/1992 vide its judgment dated 16.9,1992. When however the charge of the post of Secretary was not given to said Shri Bhuraram Choudhary, he filed a contempt petition being D.B. Civil Contempt Petition No.338/1992. This court by its judgment dated 26.9.1992 held the Joint Registrar of the Cooperative Societies guilty of the contempt and imposed upon him a fine of Rs.500/- and in default of payment of fine, required him to undergo simple imprisonment for a period of two months. Finally, the charge of the office of the Secretary of the society was again restored to said Shri Bhuraram Choudhary.

Problem with the petitioner arose when Shri Bhuraram Choudhary by order dated 15th Sept., 1992 terminated his

services. But this was not acceptable to Shri Mohan Singh Gehalot, who inspite of the aforesaid judgment passed by this Court, still claimed himself to be Honorary Secretary of the society. He passed an order dated 10.2.1992 withdrawing thereby the termination order of the petitioner and requiring him to join duties immediately. According to the petitioner, the charge of the office of Secretary was handed over to said Shri Mohan Singh Gehalot by the out going Honorary Secretary Shri Madan Gopal Purohit by charge assumption report dated 25.7.1992, consequent upon the adoption of a resolution in circulation by members of the committee of the management on 25.7.1992, the minutes whereof were approved by the committee on 3.8.1993. He claims that his first appointment was approved by the management committee vide their resolution dated 28.0.1992. When however Shri Bhuraram Choudhary joined as Honorary Secretary of the society, he disallowed the petitioner to work as clerk from 7.12.1992. However, he did not pass any order terminating his services or disallowing him to discharge his duties.

In these circumstances, the petitioner raised a dispute under Section 76 of the Act of 1984. This was decided by the Registrar, Cooperative Societies for Rajasthan, who has been designated as Central Registrar too for the purpose of the Act of 1984 also. The Registrar concluded that when this Court by judgment dated 29th July, 1992 accepted the authority of Shri Bhuraram Choudhary to continue to discharge the functions of the Secretary of the society and if the authorization made in his favour by the general house of the society on 30.10.1998 was was allowed to continue as such till the new election took place, Shri Mohan Singh Gehlot had no legal authority to work and act as Honorary Secretary. It was also held that although charge assumption report was shown to have been prepared on the basis of resolution passed by the committee of the management by circulation but no proof or evidence of this fact was produced to the effect as to if there was really any such emergency that required handing over the charge of the office of Secretary to Shri Mohan Singh Gehlot on the same date on which resignation of Shri Madan Gopal Purohit was accepted and further that whether the resolution approved by

circulation was confirmed by the managing committee in its next meeting and not even this has been proved that any such meeting ever took place. The Registrar also held that the appointment of the petitioner was made on the vacancy caused on account of retirement of Shri K.L. Sharma, who in fact was due to retire on 31st July, 1992 whereas the petitioner was appointed on 30.7.1992 in advance. Thus holding the Registrar rejected the claim of the petitioner.

Feeling aggrieved thereby, the petitioner preferred further appeal to the Government of India,which has been decided by the Joint Secretary to the Government Ministry of Agricultural Department of Agricultural Corporation vide its order dated 20th August, 1996. It was held that the person who appointed the petitioner while acting as Honorary Secretary of the society was not an authorized person in view of the judgment of this Court delivered on 29th July, 1992 therefore he should have refrained from making appointment on 30th July, 1992. It is against these two orders that the petitioner has preferred this writ petition with the prayer that

respondents may be directed to reinstate him in service.

I have heard Mr.M.C. Bhoot, Advodate, for the petitioner, Mr.S.K. Malik, Advocate, for the respondents no.1 & 2, Mr.Rameshwar Dave, Dy.GA, for the respondent no.3 and Mr. D.L.R. Vyas, Advocate, for the respondents no.4 to 6. I have also carefully perused the record.

Shri M.C. Bhoot, learned counsel for the petitioner argued that Shri Mohan Singh Gehlot was duly appointed as Honorary Secretary by resolution of the committee of the management passed by circulation in place of Shri Madan Gopal Purohit who resigned and said resolution was later approved by the committee in its meeting held on 3.8.1992. He has argued that apart from the petitioner three more persons were appointed as LDC by said Shri Mohan Singh Gehlot. When they were removed by Shri Bhuraram Choudhary, they approached the Prescribed Authority on 13.2.1996 under the Rajasthan Shops and Commercial Establishment Act, 1958 (in short the Act of 1958) and their

writ petition was allowed and they were ordered to be reinstated in service. He also cited the judgment of this Court in Railway Employees Cooperative Banking Society Ltd. Jodhpur Vs. Authority under Shops and Commercial Establishment Act & Anr. (S.B.Civil Writ Petition No.1470/1996) decided on 16th July, 1999. This Court while interpreting Section 51 of the Act of 1984 held that appointment made by even incompetent authority cannot be taken to be invalid merely because the appointment of such officer was not valid. Shri Bhoot argued that this judgment was not only upheld by the Division Bench of this court but also by Hon'ble Supreme Court. According to him therefore the petitioner is entitled to same treatment and he is also entitled to be reinstatement in service.

On the other hand Shri S.K. Malik, learned counsel for the respondent no.1 and 2 argued that when this Court by an authoritative pronouncement in its judgment delivered on 29th July, 1992 held that Shri Bhuraram Choudhary's continuation as Honorary Secretary to the society is valid and legal and

consequent upon the confidence reposed in him by general body of the society by the resolution dated 30th Oct., 1992, exercise of power by Shri Mohan Singh Gehlot as Honorary Secretary was wholly incompetent and unauthorized in law. He was a userpher of the office of Honorary Secretary. While the judgment was passed by this Court on 29th July, 1992, appointment of the petitioner was made by the said Shri Mohan Singh Gehlot showing himself as Honorary Secretary on 30th July, 1992 only because he happened to be the son of one Shri Jetharam Borana, who was a member of the management committee. This appointment was made in vacancy that might have been available due to channed consequences of retirement of Shri K.L. Sharma scheduled to take place on 31st July, 1992 whereas the appointment was made a day in advance. According to him, the committee of the management did not have any power under the bye laws or the Act of 1984 to either appoint or called for any one as Honorary Secretary. The office of the society was closed on 25.7.1992 due to Saturday as the railways observe five days week and no meeting of the committee was convened earlier than 3.8.1992

when its last resolution was confirmed. According to Shri Malik, the case of the petitioner is distinguishable from other three employees who approached the prescribed authority under the Act of 1984. Those employees were appointed much prior to passing of the judgment by this Court on 29th July, 1992. Their initial appointments were made on 16.6.1992 and they continued to work upto 31.12.1992. It was in that context that this Court while interpreting Section 51 of the Act of 1984 held that defect in the appointment of the Honorary Secretary would not effect validity of appoointment of these employees. The judgment of the learned Single Judge was reversed by the Division Bench of this Court holding that these persons did not work in continuous employment of the society for not less than six months. The Hon'ble Supreme Court in appeal however reversed the Division Bench judgment holding that the pleadings and evidence cannot be construed in hyper technical manner just because confirmation of the order of the employees was passed on 19th July, 1992 whereas their initial appointment was made on 16th June, 1992 and they continued till 31.12.1992. According to Shri Malik, appointment in the

case of the petitioner was made subsequent to the judgment of this Court on 29th July, 1992 on which date Shri Bhuraram Choudhary was already declared to be lawful person to hold the charge of the office of Honorary Secretary. When this court by its subsequent judgment dated 26th September, 1992 held Joint Registrar of the Cooperative Societies guilty of contempt, appointment of , the petitioner made by Mohan Singh Gehlot cannot be justified in law. In order to buttress his arguments, Shri Malik relied upon the judgments of the Hon'ble Supreme court in A. Umarani Vs. Registrar, Cooperative Societies & Ors reported in (2004) 7 SCC 112, Kendriya Vidyalaya Sangathan & Ors. Vs. Ajay Kumar Das & Ors reported in reported in (2002) 4 SCC 503, Baadakanta Mishra Vs. High Court of Orrisa & Anr reported in AIR 1976 SC 1899, Nandganj Sihori Sugar Co. Ltd. Rae Bareli & Anr. Vs. Badri Nath Dixit & Ors reported in (1991) 3 SCC 54 and judgment of Allahabad High Court in Mechanical Department, Primary Cooperative Bank Ltd. & Anr. Vs. Secretary, Ministry of Agriculture & Cooperation, New Delhi reported in AIR 1999 Allahabad 173.

Shri D.L.R. Vyas appearing for the respondents no.4 to 6 argued that the writ petition in which the judgment was passed on 29th July, 1992 was filed by one Satyanarayan seeking a mandamus to the respondents to hold elections and not to permit Shri Bhuraram Choudhary to continue as Honorary Secretary. This Court passed an interim order directing official respondents to hold elections and till then appoint one of the members of the society as its Honorary Secretary. It was therefore that Shri Madan Gopal Purohit was appointed as Secretary on 13.2.1991 and when he resigned Shri Mohan Singh Gehlot was appointed in his place by resolution passed by the executing committee in circulation. While supporting the stand of the petitioner, he argued that since Shri Mohan Singh Gehlot was a duly appointed Honorary Secretary, the appointment of the petitioner made by him cannot be said to be illegal. He further argued that Shri Mohan Singh Gehalot was not a party to the aforesaid writ petition and therefore the judgment passed by this court on 29.7.1992 could not be binding on him.

I have heard the learned counsel for the parties and perused the records.

Although styled as a writ of mandamus, the present writ petition can subsist only as a writ of certiorari against the orders passed by the Central Registrar on 17.8.2004 under Section 76 of the Act of 1984 and the Central Government under Section 90 of the said Act. Scope of examination of the present writ petition would therefore be confined to finding any error apparent on the face of record in these orders. Validity of the order of removal of the petitioner need not be therefore examined as though it were a writ petition filed under original jurisdiction of this Court. Besides, the order terminating the petitioner 's services which was passed on 15.9.1992 and which was shown to have been withdrawn by order dated 28.10.1992 by Shri Mohan Singh Gehlot was not subjected to challenge either before the Central Registrar and even before this Court. It is the order of initial appointment of the petitioner passed on 30.7.1992 which goes to the root of the matter. This order was passed after judgment was

delivered in the writ petition on 29.7.1992. Whatever may have been the interim order earlier passed during the pendency of the writ petition, once when the petition was decided, it is the final judgment which should prevail. Effect and operation of the interim orders so far in force would then come to an end and it is the final judgment which would prevail. This court categorically held that there was no provision in the bye laws for a contingency where even after expiry of three years if the elections are not timely held. Appointment of Shri Bhuraram Choudhary as Honorary Secretary pursuant to resolution passed by general body of the society on 30.10.1991 would validly continue till the fresh elections were held and it cannot be said that he automatically ceased to hold office on 30.11.1991. Even if Shri Bhuraram Choudhary was not a party respondent in the aforesaid writ petition, he cannot be allowed to say that the said judgment would not be binding on him because if the society was a party respondent and the issue involved was one pertaining to election of the management committee and seeking a writ of mandamus to dislodge Shri Bhuraram Choudhary from the

office of Honorary Secretary, the judgment passed on this issue would equally bind an appointee of the management committee. In any case Shri Bhuraram was nominated to act as an Honorary Secretary by general house of the society by its resolution dated 30.10.1991, which was the parent and larger body, management committee elected by it could not supersede such appointment/nomination of Shri Bhuraram Choudhary by appointing Shri Mohan Singh Gehlot as Honorary Secretary. Findings recorded by the Central Registrar in its order dated 17.8.1994 are based on sound reasonings and logical conclusions and are in conformity with the judgment passed by this Court on 29th July, 1992. For the same reasons therefore the conclusions arrived at by the Joint Secretary to the Government of India that Shri Mohan Singh Gehlot as Honorary Secretary of the society was not authorized person in view of the judgment of this court and he should have refrained from making appointment of the petitioner after the aforesaid judgment, are also perfectly legal and justified. These two orders do not suffer from any error apparent on the face of record and do not call for any interference by this

Court.

In Ajay Kumar Das (supra) their Lordships of the Hon'ble Supreme Court had the occasion to consider somewhat similar problem where one Asstt. Commissioner of the Kendriya Vidyalaya Sangathan had made certain appointments on the post of LDC even though the said Asstt. Commissioner had already been removed from service but was continuing on the strength of an interim order passed in his writ petition by Delhi High Court. His writ petition was eventually dismissed by the Delhi High Court but taking advantage of the interim order n the meanwhile, he had made the aforesaid appointments on the post of LDC. As a result of inquires, when it transpired that the said Asstt. Commissioner committed certain irregularities in regard to making such appointment, such appointees were removed/discontinued from service. The Central Administrative Tribunal set aside their termination order on the ground that such appointees were not parties to the proceedings and their removal was made without observing principle of natural justice and the judgment of the tribunal was later upheld by the High Court. In those facts, the Hon'ble Supreme Court

held that even though the respondents may not be party to the writ proceedings before the High Court, but if the appointing authority itself did not have the power to make appointment by reason of termination of service, its appointees could not be allowed to contend that they should have been served with notice prior to their removal. The judgment of the tribunal and that of the High Court were therefore reversed.

Adverting now to the argument of learned counsel for the petitioner that appointment of the petitioner would be saved by virtue of Section 51 of the Act of 1984 particularly when similar appointments made in the case of three other employees are saved, it should be noted that Section 51 of the Act of 1984 provides that "No act of a multi-state operative society or of any Board of any Committee or any officer of the society shall be deemed to be invalid by reason only of the existence of any defect in the proper in the constitution of the society or of the Board or of the committee thereof or in the appointment or election of an officer or on the ground that such officer was disqualified to hold office." But this question

need not detain me longer because in so far as the case of other employees referred to by the petitioner is concerned, that was the case where appointments of the employees were made much before the judgment delivered in the case of Satyanarayan on 29th July,1992. Those employees had approached the Prescribed Authority under Section 28A of the Act of 1958 on the premise that their termination was made after they completed the service of continuous six months with the society although their writ petition was allowed, but the Division Bench reversed the judgment of the learned Single Judge holding that the period of six months of service should be counted from 19th July, 1992 when they were confirmed on such post and not from 16th July, 1992 when they were initially appointed. It was in these facts that the Hon'ble Supreme Court reversed the judgment of the Division Bench restoring that of the Single Bench holding that "the appointment in terms of the letter of appointment dated 19th July, 1992 itself postulates continuity from 16th July, 1992." In the present case neither the petitioner was appointed prior to the judgment passed by this Court in Satyanarayan on 29th July, 1992 nor did

he complete six months nor even did he approach the Prescribed Authority under the Act of 1958. Moreover, the provisions of Section 51 of the Act of 1984 by any stretch of interpretation cannot be projected upon the categorical finding recorded by this Court in Satyanarayan case (supra) when it passed the said judgment on 29th July, 1992 holding Shri Bhuraram Choudhary to be lawful and duly authorized Honorary Secretary and further that he does not automatically cease to hold the said office just because period of three years expired. It was highly improper on the part of Shri Mohan Singh Gehalot to appoint the petitioner who happens to be the son of one of the member of Executing Committee Shri Jetharam. What is more, when Shri Bhuraram Choudhary removed the petitioner on 15.9.1992, Shri Mohan Singh Gehlot still persisted in illegally perpetuating himself as Honorary Secretary by passing an order dated 28.10.1992 withdrawing order of termination and requiring the petitioner to immediately join his duties. This order was also contrary to the Division Bench judgment passed on 26th Nov., 1992 in the contempt petition filed at the instance of Shri Bhuraram Choudhary

wherein Joint Registrar of the State was held guilty of contempt of court and has awarded penalty of Rs.500/- and in default of payment of fine to undergo simple imprisonment for the period of two months. The learned counsel for the respondents no. 4 to 6 has placed on record the charge assumption report dated 25.7.1992 whereunder Shri Madan Gopal Purohit is shown to have handed over the charge of the office to Honorary Secretary to Mohan Singh Gehlot, copy of the resolution dated 25.7.1992 shown to have been passed by circulation and copy of the minutes dated 3.8.1992 allegedly confirming the resolution passed by circulation on 25.7.1992. The Central Registrar in his order has rightly concluded that the petitioner failed to produce any evidence or witnesses to prove as to what was the extra ordinary emergency to hand over the charge of post of the Honorary Secretary to Shri Mohan Singh Gehlot by circulation whereas according to Rules, such an action should have been taken by convening meeting of the management committee and further that if it was passed by circulation no evidence has been placed on record whether or not it was confirmed by the management committee in

subsequent meeting. While learned counsel for the respondents no.1 and 2 has asserted before this Court that all those three documents were prepared subsequently, none-the-less fact remains that the minutes of the meeting shown to have been prepared on 3.8.1992 were not produced before the Central Registrar and therefore he recorded the aforesaid finding. Although this document does not inspire confidence but even if it is accepted that such minutes were prepared on 3.8.1992 confirming thereby the appointment of Shri Mohan Singh Gehlot as Honorary Secretary, this action was diametrically opposed to the view taken by this Court in its judgment which already stood delivered on 29th July, 1992 and regarding which an order of penalty was passed by the Division Bench in contempt proceedings as aforesaid. Everything in the present matter appears to have been done with a view to circumventing the judgment passed by this Court and some how or other to retain control of the society.

It is trite law that a judgment is precedent for what it actually decides and not for what can be logically deduced

therefrom. The ratio of a judgment has to be ascertained by analyzing all the material facts and the issues involved in the case that were raised and argued on both the sides. The decision has to be read with reference to and in the context of particular statutory provision interpreted by the court. While interpreting a judgment, the court has to keep in mind that it has to be read as applicable to the particular facts proved or assumed to be proved. Since the generality of expression which may be found thereunder are not intended to be exposition of the whole of the law, but are governed and qualified by the particular facts of the case in which such expressions are to bound. A little variance and miner difference and even an additional fact may not lead to vary precedential value of a given judgment when cited in another case. Law of precedents thus analyzed, I am of the view that the judgment in Ajay Kumar (supra) cannot be applied to the facts of the present case.

In view of the aforesaid discussions, I do not find any infirmity in the orders dated 20.8.1996/16.9.1996 and

17.8.1994 amounting to error apparent on record so as to warrant interference by this Court. The writ petition is accordingly dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-